

NOV 21 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS DOMINGUEZ-MAROYOQUI,

Defendant - Appellant.

No. 04-50375

D.C. No. CR-03-03534-BTM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Argued and Submitted October 18, 2005
Pasadena, California

Before: KLEINFELD, TASHIMA and FISHER, Circuit Judges.

Dominguez-Maroyoqui appeals the district court's imposition of a 16-level crime of violence enhancement for his prior 18 U.S.C. § 111 assault conviction.

Because the parties are familiar with the facts, we do not recite them in detail. We affirm.

^{*}This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

In 1996, Dominguez-Maroyoqui was convicted of assaulting a federal officer in violation of 18 U.S.C. § 111. In 2003, he was convicted of violating 8 U.S.C. § 1326. At the sentencing hearing, the district court determined that Dominguez-Maroyoqui's earlier § 111 assault conviction could serve as the basis for a 16-level crime of violence sentencing enhancement under U.S.S.G. § 2L1.2.

Dominguez-Maroyoqui claims that his earlier assault conviction was not aggravated enough to merit a 16-level enhancement. The district court correctly found that Dominguez-Maroyoqui's conviction for felony forcible assault on a federal officer fell within the Guidelines' definition of crime of violence.¹ As long as the prior conviction was for a felony assault, the Guidelines do not require any particular level of aggravation or degree of assault to merit a crime of violence enhancement. *See U.S. v. Pimentel-Flores*, 339 F.3d 959, 966 (9th Cir. 2003).

Dominguez-Maroyoqui also argues that the district court's downward departure was insufficient. Here, the district court understood its authority to depart downward and did so. Dominguez-Maroyoqui may not "challenge on appeal the extent of [his] downward departure." *U.S. v. Riggins*, 40 F.3d 1055, 1058 (9th

¹Dominguez-Maroyoqui does not raise, and we need not decide, whether 18 U.S.C. § 111 is a categorical crime of violence. *See Taylor v. U.S.*, 495 U.S. 575 (1990).

Cir. 1994). Dominguez-Maroyoqui has not sought a limited remand under *U.S. v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc).

Accordingly, Dominguez-Maroyoqui's sentence is **AFFIRMED**.